

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 25/Lab./AIL/T/2017,
Puducherry, dated 15th March 2017)

NOTIFICATION

Whereas, the Award in I.D.No. 28/2013, dated 27-1-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Easun-MR Tap Changers (P) Limited, Puducherry and its workman Thiru. A. Dhanapathy, Puducherry over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

R.DJACOMAR,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL -CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Thiru G. THANENDRAN, B.COM., M.L.,
Presiding Officer.

Friday, the 27th day of January 2017.

I.D. (L) No. 28/2013

A. Dhanapathy . . . Petitioner
Versus

The Managing Director,
M/s. Easun-MR Tap Changers (P) Limited,
Puducherry. . . Respondent

This industrial dispute coming on 25-1-2017 for final hearing before me in the presence of Thiru S. Venkatapathy, Counsel for the petitioner and Thiru P. Balamurali, Counsel for the respondent on record and subsequently when the case was posted for respondent side evidence, the respondent being called absent and set-*ex parte*, upon hearing the petitioner and perusing the case records, after having stood over for consideration till this day, this Court passed the following:-

AWARD

1. This industrial dispute has been referred as per the G.O. Rt. No. 81/AIL/Lab./J/2013, dated 29-5-2013 for adjudicating the following:-

(i) Whether the dispute raised by the petitioner Thiru A. Dhanapathy against the management of M/s. Easun-MR Tap Changers (P) Limited, over his non-employment is justified or not ? If not justified, what relief he is entitled ?

(ii) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

The petitioner stated that he did Diploma in Electrical and Electronics Engineer and joined the service of the respondent company *i.e.*, M/s. Easun-MR Tap Changers (P) Limited, as an employee in Quality Control Department on 13-10-2011 and he was not issued any orders towards his employment by the respondent management but, he was serving his service without any leave or any unblemished remarks for the period of more than 1 year *i.e.*, 13-10-2011 to 31-10-2012, while being so, the respondent management stopped the petitioner from the service/employment on the ground of service break for the period of 15 days on 31-10-2012 because of to resist the completion of the continuous service. When the petitioner sought the reason for granting leave, the manager of the company Thiru Gurusankar had replied that due to lack of orders, the management is in a position to retrench some of the workers and he was also asked to find a new job by the management.

The petitioner further stated that he was granted ESI Card by the respondent management *vide* ESI No. 5518870457 and he was working directly under the control of the respondent management and he had been serving the respondent management at the utmost satisfaction of the respondent management and there is no remarks at all against the petitioner so far and he was recruited by the respondent management directly and further, the respondent had exercised full control over the petitioner and the attendance register was maintained by the respondent management and the petitioner had worked not less than 25 days every month and the petitioner had worked even on all Sundays in a month and had done overtime work monthly 15 days.

The petitioner further stated that during the conciliation proceedings the respondent management has alleged that the petitioner was working under their contractors M/s. Servocraft HR solutions (P) Limited, and engaged for supporting services during the period from October, 2011 to October, 2012 and further, the management belied that the petitioner didn't perform the duty assigned by the Supervisor inspite of verbal warnings given to him and owing to the same he was sacked but, the management later in the conciliation proceedings reported that they are ready to provide employment in Chennai as there is no vacancy in Puducherry and the management has taken different stand at the inspection and later they resiled from their earlier stands and all these thing shows that the management has indulged in an unfair labour practice as against the petitioner and there is no contractor like Servocraft HR solutions working in the respondent management.

The petitioner further stated that he have been offered employment by the respondent management directly as a regular employee after undergoing a thorough process of selection and interview and he was serving at the respondent management from 13-10-2011 to 31-10-2012 without any blemish or remarks at all and he was serving at the utmost satisfaction of the respondent management as a regular employee but, in order to escape from the continuity of service the respondent management purposely issued break for the period of 15 days and that the petitioner served for the period of 365 days with continuous employment and though without any justice or reasons, the respondent management *sue moto* and blindly terminated the petitioner from the service which is absolutely against the Labour laws as well as Natural justice and therefore the said alleged impugned order of the respondent managements against and violation of sec.25-F of Industrial Disputes Act, 1947.

The petitioner further stated that the petitioner had also approached before the Labour Officer-Conciliation at Puducherry on 24-12-2012 but, within the period 45 days there is no amicable settlement arrived and therefore, as per the Amended Act, the petitioner is constrained to file this petition before this Court for adjudication and prays before this Court to pass an order for directing the respondent management to reinstate the petitioner with full back wages, continuity of service and all other attendance benefits.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:

The respondent denied all the allegations contained in the claim statement of the petitioner and stated that while the case was in the stage of conciliation it was found that the petitioner was working with one M/s. Servocraft HR solutions (P) Ltd., RF 4 Galilei Square, No.27/11, Lakshmi Street, Alagappa Nagar, Kilpauk, Chennai-10 (Regd. Office), a licensed contractor working for the respondent and the respondent had any sort of nexus with the petitioner directly and there is no Master and Servant relationship in between the respondent and the petitioner at any point of time and that the petitioner may arise his claim with his Employer namely M/s. Servocraft HR Solutions (P) Limited, and the petitioner claim with the respondent is not at all maintainable and the respondent is not the proper party either in law or on facts and the petitioner suppressed facts and the petitioner employed through the contractor namely M/s. Servocraft HR solutions (P) Limited, and there was no relationship of employer and employee with the workers employed through contractor and the petitioner being one them, there was no question of termination of his services and the petitioner has failed to produce any document to establish the relationship of master and servant, and the burden of proof of the same with the petitioner and the petitioner was employed as Office Assistant in loading work in the quality control Department, the work of loading and unloading was also being carried out by the contractor and the petitioner was employed through contractor for loading and unloading of materials was being done by the petitioner in the respondent establishment was entrusted to the petitioner through contractor and the petitioner has received the salary from the contractor and the labour supplied by the contractor will work under directions, supervision and control of the respondent but would not make the petitioner a direct employee of the respondent, if, the salary is paid by a contractor against the attendance maintained by the contractor, if, the right to regulate the employment is with the contractor and the ultimate supervision and control with the contractor and the petitioner has not eligible to claim anything from the respondent and that the attendance register of the petitioner maintained by the contractor, the work which was being done by the petitioner in the respondent establishment was carried out through contractor engaged by the establishment and that the petitioner mere sent an application for claim without produce any documents in supporting of his claim and the petitioner was employed through contractor and not in direct employee of the respondent establishment and

that the petitioner has not come with clean hand and the claim of the petitioner against the respondent is liable to dismiss and the name of the contractor who was engaged by the respondent is the employer and prays this Court to dismiss the petition.

4. Despite several opportunities given for the respondent side evidence, the respondent called absent and no representation for respondent and he was set *ex parte*.

5. On the side of the petitioner, the petitioner examined himself as WW.1 and Ex.W1 to Ex.W5 were marked.

6. *The point for determination is:*

Whether the petition can be allowed or not ?

7. Heard. It is the evidence of the petitioner that he joined service in the respondent company on 13-10-2011 as an employee in Quality Control Department and was working there for the period of more than one year without any remarks from 13-10-2011 to 31-10-2010. Without giving any notice, the respondent management stopped him from service and asked him to go on leave for 15 days and that he has got ESI Card *vide* ESI No. 5518870457 and he was working directly under the control of the management and had been in service to the utmost satisfaction of the respondent management and there is no remarks at all against him and that he was recruited by the respondent management directly and that they had exercised full control over him and that attendance register was maintained by the respondent management and to escape from the continuity of service, the respondent management purposely issued break for the period of 15 days and that he served for the period of 365 days with continuous employment and that therefore, the respondent management *sue motto* and blindly terminated him from the service against the Labour laws and as well as Natural justice.

8. In support of his evidence he has exhibited copy of the ESI Card as Ex.W1, Salary slip issued by the respondent management to him as Ex.W2, letter submitted by him to the Labour Officer (Conciliation), Puducherry as Ex.W3, copy of reply submitted by the respondent to the Labour Officer (Conciliation), Puducherry as Ex.W4 and copy of failure report submitted by the Labour Officer (Conciliation) to the Secretary to Government (Labour), Puducherry as Ex.W5, These documents would go to show that the petitioner has served in the respondent management under the control of the respondent and the respondent

has paid the salary to him and he was under the direct control of the respondent. On the other hand, though the respondent has filed the agitation stating that the petitioner was working with one M/s. Servoraft HR Solutions (P) Limited, RF 4 Galilei Square, No.27/11, Lakshmi Street, Alagappa Nagar, Kilpauk, Chennai-10 (Regd. Office), a licensed contractor working for the respondent and that the respondent had any sort of nexus with the petitioner directly and that there is no Master and Servant relationship in between the respondent and the petitioner at any point of time. However, the respondent has not let in any evidence or produced any document to show that M/s. Servoraft HR Solutions (P) Limited, is the employer of the petitioner.

9. Hence, from the oral and documentary evidence of the petitioner, it is clearly established by the petitioner that he was working with the respondent management for the period from 13-10-2011 to 31-10-2012 with continuity of service and he was terminated without any proper notice under the 25F of the Industrial Disputes Act for entrenchment of the workman. Without adopting any procedure, orally instructed the petitioner to stop his work and as such it can be held that the termination of the petitioner by the respondent is invalid and illegal and the same is liable to be set aside. As this Court has already held that the termination of the petitioner is invalid and illegal and the same is liable to be set aside, it is to be seen that whether the petitioner is entitled for the relief of retrenchment with continuity of service and back wages. The petitioner was found as workman and his work is an essential and therefore, the petitioner has to be given reinstatement. Hence, it can be held that the petitioner is entitled for an order of reinstatement with continuity of service.

10. In this case nothing is pleaded by the petitioners/claimants that they have not joined or worked in any other establishment or they did not have any income for their survival and that therefore, petitioner is not entitled for full back wages. However considering the facts and circumstances of the case, this Court finds that the petitioner was illegally terminated from his service by the respondent all of a sudden without giving any notice and hence he has approached before the Labour Conciliation Officer and subsequently before this Court for challenging the termination by the respondent. On the other hand, the respondent has not proved that the petitioner has earned income after his termination from service.

In the above circumstances, this Court does not find any reasonable cause to grant full back wages to the petitioner and consequently, considering the other circumstances in this case, this Court is inclined to grant partial back wages of 30% to the petitioner till his reinstatement. Accordingly, this point is answered.

11. In the result, the petition is partly allowed and the petitioner is entitled for the reinstatement with continuity of service and 30% of back wages till his reinstatement.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 27th day of January, 2017.

G. THANENDRAN,
Presiding Officer, Industrial Tribunal,
Puducherry.

List of petitioner's witness:

PW.1 — 5-2-2016 — A. Dhanapathi

List of petitioner's exhibits:

- Ex.W1— Copy of the ESI card of the petitioner.
- Ex.W2— Copy of the 8 series of Salary slip issued by the respondent management to the petitioner, 2011-2012.
- Ex.W3— Copy of the letter submitted by the petitioner to the Labour Officer (Conciliation), Puducherry, dated, 24-12-2012.
- Ex.W4— Copy of the reply submitted by the respondent to the Labour Officer (Conciliation), Puducherry, dated, 5-1-2013.
- Ex.W5— Copy of the failure report submitted by the Labour Officer (Conciliation) to the Secretary to Government (Labour), Puducherry, dated, 29-5-2013.

List of respondent's witnesses: Nil

List of respondent's exhibits: Nil

G. THANENDRAN,
Presiding Officer, Industrial Tribunal,
Puducherry.

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பல வகை எண். 48/இசநி./கோ.2/2017,
புதுச்சேரி, நாள் 2017 (வரு) மார்ச் மீ 16)

ஆணை

புதுச்சேரிமாநிலம், காரைக்கால் வட்டாரம், திருமலைராயன்பட்டினம் கொம்புன், படுதார்கொல்லை, அருள்மிகு சோளீஸ்வரர், அருள்மிகு சிவகாமி அம்மன் தேவஸ்தானத்திற்கு, அரசு ஆணை பல வகை எண் 16/இசநி./கோ.2/2012, நாள் 18-4-2013-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிருவகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்துவிட்டது

2. இந்நிலையில், மேற்குறிப்பிட்ட திருக்கோயிலை நிர்வகிப்பதற்கு ஒரு புதிய அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம், 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய தேவஸ்தானத்திற்கு பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது :-

திருவாளர்கள்:

1. மு. ராஜேந்திரன், த/பெ. முத்துவேல், .. தலைவர்
எண் 10, மேற்கு தெரு, படுதார்கொல்லை,
திருமலைராயன்பட்டினம் கொம்புன்,
காரைக்கால்.
2. சு. இந்திரநாதன், த/பெ. சுவாமிநாதன் .. துணைத்
எண் 6, மேற்கு தெரு, படுதார்கொல்லை, தலைவர்
திருமலைராயன்பட்டினம் கொம்புன்,
காரைக்கால்.
3. நா. வெங்கடேசன், த/பெ. நாகப்பன், .. செயலாளர்
எண் 15, மேற்கு தெரு, படுதார்கொல்லை,
திருமலைராயன்பட்டினம் கொம்புன்,
காரைக்கால்.
4. கோ. சூரியநாராயணன், .. பொருளாளர்
த/பெ. கோவிந்தசாமி,
எண் 10, கீழுத் தெரு, படுதார்கொல்லை,
திருமலைராயன்பட்டினம் கொம்புன்,
காரைக்கால்.
5. ரா. ராஜீ, த/பெ. ராமசாமி, .. உறுப்பினர்
எண் 15, முத்தாம்பள்ளத் தெரு,
படுதார்கொல்லை,
திருமலைராயன்பட்டினம் கொம்புன்,
காரைக்கால்.

4. புதிய அறங்காவலர் வாரியத்தினர் உடனடியாகத் திருக்கோயிலின் பொறுப்புக்களை அதன் அசையும், அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் ஏற்றுக்கொள்ளுமாறு அறிவுறுத்தப்படுகிறார்கள்.